IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3210 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INSECTICIDES LTD.

Versus

KISHAN PATEL

Appearance:

1. Special Civil Application No. 3210 of 2003

SINGHI & CO for Petitioner No. 1

MR NIKHIL S KARIEL for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/03/2003

ORAL JUDGEMENT

RULE. Mr.Nikhil S. Kariel, the learned advocate waives service of rule. The petitioner, Gujarat

Insecticides Ltd. filed the present petition challenging the order dated 18.1.2003 passed by the Industrial Tribunal, Vadodara below exh.9 in Misc. Application (IT) No.11 of 2002 in Approval Application No.16 of 2000 for quashing and setting aside the award which is alleged by the petitioner to be an ex parte award.

2. Mr.Buch, the learned advocate for the petitioner invited attention of the Court to the contents of para 6 wherein it is specifically mentioned that after the notice was served and the respondent workman had caused his appearance, the matter was kept for oral evidence. Despite granting number of adjournments the petitioner company did not remain present and hence the right to lead oral evidence was closed. Thereafter, the oral evidence of the respondent workman was recorded and as the advocate of the petitioner company was not present, the right of the petitioner company for cross examination was also closed. Thereafter, the matter proceeded further and the Approval Application then came to be rejected by order dated 16.7.2002. The learned Judge has discussed in the order below Misc. Application (IT) No.11 of 2002 that the reasons which are put forward by the petitioner company for not remaining present before the Industrial Tribunal are not satisfactory and therefore, the present application is not accepted.

3. Mr.Buch, the learned advocate candidly submitted that it was on account of the learned advocate not remaining present, the matter was not properly defended. The learned advocate representing the petitioner company was normally practising at Vadodara, hence could not remain present before the Industrial Tribunal, it was only at a very late stage it was learnt by the petitioner company that the matter is dismissed for default and an order is passed of rejecting the Approval Application. Mr.Buch, the learned advocate submitted that it is true that the respondent workman has undergone the agony of waiting for the adjudication of the application and if once again the matter is remanded he will have to once again undergo the same agony. He submitted that as charge against the respondent workman is serious, he has instruction to press for relief. He submitted that looking to the facts of the case it will be in the interest of justice to give an opportunity by saddling the petitioner company with costs.

2. Mr.Kariel, the learned advocate for the respondent workman appearing on caveat submitted that this is a case wherein the petitioner company has shown utter negligence in conducting the proceedings and the

learned Judge has rightly rejected the Misc. Application. He submitted that no sympathy is warranted in favour of the petitioner company, which does not take care of its interest. Prima facie the submissions of Mr.Kariel, the learned advocate are true, but then taking into consideration the fact that the matter has gone ex parte, prima facie on account of negligence on the part of the learned advocate the matter remained unrepresented and the order was passed in default and not on merits of the case. Hence it is deemed fit to pass the following order.

3. The judgement and order passed in Misc. Application (IT) No.11 of 2002 and also in Approval Application No.16 of 2000 are hereby quashed and set aside. The matter is remanded to the Industrial Tribunal, Vadodara. The petitioner company shall pay a sum of Rs.10,000/-, by way of cost of the proceedings to the respondent workman within two weeks from the date of receipt of this order. Taking into consideration the age of the litigation, the Industrial Tribunal is directed to give priority to the matter and decide the same within six months from the date of receipt of this order. The petition is disposed of accordingly. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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